

ANN BAVENDER*
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
RICHARD HILDRETH
FRANK R. JAZZO
ANDREW S. KERSTING
EUGENE M. LAWSON, JR.
SUSAN A. MARSHALL*
HARRY C. MARTIN
GEORGE PETRUTSAS
RAYMOND J. QUIANZON
LEONARD R. RAISH
JAMES P. RILEY
ALISON J. SHAPIRO
KATHLEEN VICTORY
JENNIFER DINE WAGNER*
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

www.fhh-telcomlaw.com

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FRANK U. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1956-1983)
PAUL D.P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

EDWARD F. KENEHAN
(1960-1978)

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*
MITCHELL LAZARUS*
EDWARD S. O'NEILL*
JOHN JOSEPH SMITH

WRITER'S DIRECT
703-812-0471
weiss@fhh-telcomlaw.com

July 17, 2000

VIA HAND DELIVERY

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

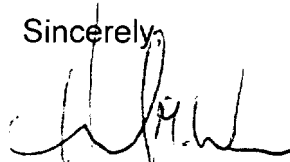
Re: Joint Petition for Rulemaking
Channel 64, Destin, FL

Dear Madam:

Enclosed for filing are an original and four copies of a Joint Petition for Rulemaking to substitute NTSC Channel 48 for Channel 64 at Destin, Florida, submitted by Kaleidoscope Partners, E. Terrill Weiss, d/b/a West Florida TV Acquisition Company, Delta Media Corporation, Marri Broadcasting Corporation, ValueVision International, Inc., and Winston Broadcasting Corporation, applicants for the construction permit for the channel. The petition is filed pursuant to Public Notice, 15 FCC Rcd 4974 (2000). Also pursuant to the Public Notice, the applicants are filing today a Joint Request for Approval for Settlement Agreement whereby they propose that the subject construction permit be granted to Kaleidoscope Partners, consistent with a universal settlement.

Should there be any questions, please contact the undersigned counsel.

Sincerely,



Howard M. Weiss

Enclosures

FLETCHER, HEALD & HILDRETH, P.L.C.

cc (w/encls.): Clay Pendarvis, Esq.
John E. Fiorini, Esq.
George Borsari, Esq.
John M. Shoreman, Esq.
William R. Richardson, Jr., Esq.
Stephen C. Simpson, Esq.
E. Terrill Weiss

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment of Section 73.606(b)) MM Docket No. _____
TV Table of Allotments) RM No. _____
TV Broadcast Stations)
(Destin, Florida))

To: Chief, Allocations Branch

JOINT PETITION FOR RULEMAKING

Kaleidoscope Partners ("Kaleidoscope"), E. Terrill Weiss, d/b/a/ West Florida TV Acquisition Co. ("Weiss"), Delta Media Corp. ("Delta"), Marri Broadcasting Corp. ("Marri"), ValueVision International, Inc. ("ValueVision") and Winstar Broadcasting Corp. ("Winstar") (collectively the "Applicants"), by counsel, and pursuant to Section 1.401 of the Commission's rules and *Public Notice*, DA 99-2605 (released November 22, 1999) ("Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations") ("*Window Filing Notice*"),¹ hereby jointly request that the Commission institute a rulemaking proceeding for the purpose of amending the TV Table of Allotments to substitute Channel 48 for the existing Channel 64 allotment at Destin, Florida. Accordingly, the Applicants propose to amend Section 73.606(b) of the Commission's rules as follows:

¹ On March 9, 2000, the Commission extended the window filing period until July 17, 2000. See *Public Notice*, 15 FCC Rcd 4974 (2000) ("Window Filing Opportunity For Certain Pending Applications and Allotment Petitions For New Analog TV Stations Extended to July 15, 2000").

	<u>Channel No.</u>	
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Destin, Florida	64	48

In support of this request, the Applicants state the following:

The Applicants currently have applications pending for a new NTSC television station to operate on Channel 64 at Destin, Florida (File Nos. BPCT2-960405XK, BPCT-960111KP, BPCT2-960403KF, BPCT2-960405KE, BPCT2-960405KH, and BPCT2-960404LK). However, in the *Report and Order* in ET Docket No. 97-157, *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, 12 FCC Rcd 22953 (1998) (“*Reallocation Order*”), the FCC reallocated channels 60-69 for public safety and other services, and announced that it would not authorize new television broadcast stations on those channels. *Id.* at 22971 ¶40. The Commission recognized, however, that those persons with pending applications and/or allotment rulemaking petitions for new full-service NTSC stations on channels 60-69 have already substantial invested time, money and effort in their respective applications and petitions. *Id.* See also *Window Filing Notice* at 3. The Commission therefore stated that it would not summarily dismiss these pending applications and allotment rulemaking petitions, but, rather, would provide these applicants and petitioners with an opportunity to amend their pending proposals to seek a channel below Channel 60. *Id.* Accordingly, pursuant to the *Window Filing Notice*, the Applicants seek to amend the TV Table of Allotments by substituting Channel 48 for the existing Channel 64 allotment at Destin, Florida.

As demonstrated in Joseph Davis' attached engineering statement, from the allotment reference point, the proposed allotment of Channel 48 at Destin complies with the minimum distance separation requirements with respect to all NTSC stations. *See Engineering Statement.* Moreover, although the proposed allotment is short-spaced to a Class A LPTV station on Channel 48 at Destin, WDES-LP, the licensee of that station, Beach TV Properties, Inc., has agreed to surrender its license for the facility or seek a displacement channel. (See copy of agreement attached.) The proposed allotment would enable a new full-service television station to commence operation from the proposed transmitter site with four megawatts of omnidirectional effective radiated power at an antenna height of 138.3 meters above average terrain without adversely affecting any other television station. *Id.* Moreover, the proposed Channel 48 NTSC facility would provide an 80 dBu contour over the entire community of Destin. *Id.*

Because the existing Channel 64 allotment is the only television channel which has been assigned to Destin, a grant of the Applicants' allotment proposal would preserve the opportunity for a first local television service to Destin, a growing community. As a result, the proposed allotment of Channel 48 to Destin would promote the objectives of Section 307(b) of the Communications Act of providing a fair, efficient and equitable distribution of television broadcast stations among the various states and communities. 47 U.S.C. §307(b). *See National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing goal of Communications Act to "secure the maximum benefits of radio to all the people of the United States"); *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to "secure local means of expression"). In addition, the proposed allotment would promote the second television allotment priority established in the *Sixth Report and Order* in Docket Nos. 8736 and

8975, 41 FCC 148, 167 (1952), of providing each community with at least one television broadcast station.

Furthermore, as the Commission expressly recognized in the *Reallocation Order*, the proposed allotment would foster the development of new networks such as The WB Television Network, the United Paramount Network, and the Paxson Network by providing an additional broadcast outlet in a top 100 television market² with which to establish a primary affiliation.³ Thus, the proposed new NTSC station would bring a first network transmission service to the residents of Destin and the surrounding area. The proposed new station also would provide an opportunity for new entry into the television broadcast industry, enhance viewpoint diversity in the Mobile-Pensacola television market, and increase competition in the local advertising market.⁴ All of this could be accomplished on a channel within the “core” channels designated by the FCC, eliminating any need for the permittee to move again.

In light of the above, the Applicants request that the Commission amend the TV Table of Allotments to substitute Channel 48 for the existing Channel 64 allotment at Destin, Florida, which would preserve the community’s first local television service. In the event Channel 48 is allotted to Destin, Kaleidoscope, the applicant who will receive the construction permit pursuant

² The Mobile-Pensacola market currently is the 62nd television market. *See Broadcasting & Cable*, B-208 (2000).

³ *See Reallocation Order*, 12 FCC Rcd at 22971, ¶40.

⁴ *See Id.*; see also *Petition for Rule Making to Amend Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Assure that the New Stations Maximize Diversity of Ownership, Control and Programming*, BC Docket No. 20418, *Report and Order*, 81 FCC 2d 233, 253 (1980), *recon. denied*, 90 FCC 2d 160 (1982), *aff’d sub nom. Springfield Television of Utah, Inc. v. FCC*, 710 F.2d 620 (10th Cir. 1983).

to a settlement agreement being filed today, will amend its pending application in accordance with the Report and Order issued in this proceeding to specify the new channel, and modify its technical proposal as necessary so that the proposed Channel 48 NTSC facility will not cause harmful interference to any other television station. In the event its application is granted, Kaleidoscope will promptly construct and operate the new NTSC facility.

WHEREFORE, in light of the foregoing, the Applicants respectfully request that the Commission GRANT this petition for rulemaking and AMEND the TV Table of Allotments by substituting Channel 48 for the existing Channel 64 allotment at Destin, Florida, which would preserve the community's first local television service.

Respectfully submitted,

KALEIDOSCOPE PARTNERS

By: Stephen C. Simpson
Stephen C. Simpson, Esq.

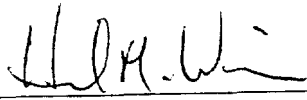
Its Counsel

WEST FLORIDA TV ACQUISITION CO.

By: George R. Borsari, Jr.
George R. Borsari, Jr., Esq.

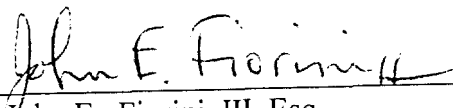
Its Counsel

DELTA MEDIA CORP.

By: 
Howard M. Weiss, Esq.

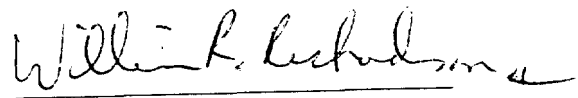
Its Counsel

MARRI BROADCASTING CORP.

By: 
John E. Fiorini, III, Esq.

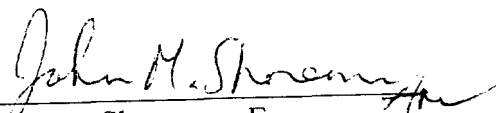
Its Counsel

VALUEVISION INTERNATIONAL, INC.

By: 
William R. Richardson, Jr., Esq.

Its Counsel

WINSTAR BROADCASTING CORP.

By: 
John M. Shoreman, Esq.

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Arlington, Virginia 22209
(703) 812-0471

July 17, 2000

Engineering Statement
prepared for
Joint Applicants
Destin, Florida
Ch. 48 4000 kW 138 m

This engineering statement has been prepared on behalf of the six mutually-exclusive applicants ("*Joint Applicants*") for vacant NTSC (analog) television Channel 64, allotted to Destin, Florida. The *Joint Applicants* are E. Terrill Weiss D/B/A West Florida TV Acquisition Co. (file number BPCT-19960111KP), Delta Media Corp. (file number BPCT-19960403KF), Marri Broadcasting Corp. (file number BPCT-19960405KE), ValueVision International, Inc. (file number BPCT-19960405KH), Kaleidoscope Partners (file number BPCT-19960405XK), and Winstar Broadcasting Corp. (file number BPCT-19960404LK). As indicated in a November 19, 1999 Public Notice¹, the Federal Communications Commission will not authorize any new NTSC stations in the Channel 60-69 spectrum. The instant statement supports a *Petition for Rulemaking* on behalf of the *Joint Applicants*, to propose a substitute channel, as outlined in the November 19, 1999 Public Notice. Channel 48 is sought as a replacement channel for Destin, Florida.

Discussion

An engineering review of the DTV allotments and NTSC assignments in the region surrounding Destin showed that an alternate channel could be used for the Channel 64 NTSC allotment. The minimum distance separation requirements of §73.610 and §73.698 were applied to NTSC assignments. With respect to DTV allotments and facilities, detailed interference studies were conducted in accordance with §73.623(c) (as required in the November 19, 1999 Public Notice). Finally, consideration was given to Low Power Television (LPTV) stations that are listed as eligible for Class A status. The studies showed that Channel 48 could be used at Destin at 4000 kW effective radiated power (ERP) and an antenna height above average terrain (HAAT) of 138 meters.

The technical data for the proposed Channel 48 allotment are summarized below. As an allotment "reference" point, the same transmitting location as that originally proposed for NTSC

¹See November 19, 1999, 1999 Public Notice *Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations*, DA 99-2585. The window was extended to July 15, 2000, as described in a Public Notice of March 9, 2000 *Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000*, DA 00-536.

Engineering Statement

(page 2 of 6)

Channel 64 by two of the applicants is specified.² The power and height combination is limited to the parameters shown (for the proposed “reference” point) in order to avoid interference to DTV stations. A predicted coverage contour map is provided as **Figure 1** which shows that Destin is fully encompassed by the proposed City Grade (80 dB μ) contour.

Summary Technical Data for Proposed NTSC Channel 48

Coordinates (NAD-27)	30° 30' 52" N-Lat 86° 13' 12" W-Lon
Channel	48
Effective Radiated Power	4000 kW (non-directional)
Antenna Height	137.8 m AGL 153.0 m AMSL 138.3 m HAAT

NTSC Allocation Considerations

A study of distances to other NTSC facilities from the proposed transmitter site is supplied as **Table 1**. As shown thereon, the minimum distance separation requirements of §73.610 and §73.698 are met.

With respect to carrier frequency offset, the required offset for nearby co-channel NTSC facilities was reviewed. The nearest co-channel full service stations each with “plus”, “minus”, and “zero” frequency channel offset are listed below.

<u>Channel</u>	<u>Station</u>	<u>Distance (km)</u>
48-	WAFF (TV) Huntsville, AL	466.3
48Z	WNTZ (TV) Natchez, MS	537.5
48+	KVTJ (TV) Jonesboro, AR	693.9

²The site was specified by *Delta Media Corporation* and *ValueVision International, Inc.* A difference in site coordinates of one second latitude exists from that specified herein and the original site coordinates, due to the structure owner's compliance with the Commission's Antenna Structure Registration program (structure registration number 1064018). Digitized 30 second terrain data (NGDC TPG-0050) were used to establish the height above average terrain.

Engineering Statement
(page 3 of 6)

Based on the distances to the stations above, a “plus” frequency offset is suggested and hereby requested. Should the Commission’s review suggest an alternative offset is more desirable, then the petitioner will agree to either alternate offset (“minus” or “zero”).

DTV Allocation Considerations

Criteria for evaluating the impact of NTSC station minor modifications were released in the Commission’s August 10, 1998 Public Notice entitled “*Additional Application Processing Guidelines for Digital Television.*” In that Public Notice, the Commission’s Mass Media Bureau stated that “NTSC modification proposals are not permitted to cause any additional interference to DTV” assignments or stations. The same Public Notice states that for NTSC minor modifications, the determination of interference to DTV facilities (as calculated per OET Bulletin 69) will be rounded to the nearest percent. The November 19, 1999 Public Notice regarding the channel change proposed herein requires that interference criteria (as described above and in §73.623(c)) be utilized to evaluate the new channel facility’s impact on DTV.

Accordingly, a study was conducted to evaluate the change in interference to pertinent DTV assignments that may be attributed to the proposed Channel 48 facility. A detailed interference study was conducted in accordance with the terrain dependent Longley-Rice point-to-point propagation model, per the Commission’s Office of Engineering and Technology Bulletin number 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, July 2, 1997 (“OET-69”).³ The

³The implementation of OET-69 for this study followed the guidelines of OET-69 as specified therein, except that the terrain profile step size is 0.1 km (which provides a finer resolution than the Commission’s standard 1 km step size). A standard cell size of 2 km was used. The Longley-Rice computer program input data, following the guidelines established under OET-69, includes a location variability of 50%, a time availability of 10%, a situation variability of 50%, horizontal polarization, 0.005 S/m conductivity, a climate constant of 15, an assumption of a continental temperate climate zone, and a receive antenna height of 10 meters. The service area for each DTV facility under study is that area predicted to receive signal levels of at least 41 dB μ using the Longley-Rice methodology, and within the DTV F(50,90) service contour distance as determined per §73.625(b). In instances where the DTV reference ERP is 50 kW or 1,000 kW, the Grade B contour of the associated analog station is used to determine the extent of the DTV station’s service area. The F(50,90) DTV service contour level is established by the formula $41 - 20\log[615/(\text{channel mid-frequency})]$ dB μ . Comparisons of various results of this computer program to the Commission’s implementation of OET-69 show good correlation.

Engineering Statement
(page 4 of 6)

interference study examined the net change in interference as experienced by DTV stations that would result from the proposal.

All stations considered in this study are listed in **Table 2**. As shown in **Table 2**, any increase in interference to DTV facilities is zero, when rounded to the nearest whole percent (per Commission policy). No interference is predicted to any other DTV station or allotment. Thus, this proposal is believed to be in compliance with Commission policy regarding NTSC channel changes from Channel 60-69 as they may affect DTV. The proposed site is not within any of the "freeze" areas as listed in the Commission's July 17, 1987 Order regarding spectrum for advanced television.⁴

Class A Television

An allocation study of possible conflicts was conducted with respect to Low Power Television (LPTV) / translator stations that may be eligible for Class A status.⁵ The study determined that the following LPTV / translator stations are close enough to the proposed NTSC Channel 48 allotment facility to warrant detailed review:

Channel	Call		City		State	Lat	Distance
Applicant/Licensee						Long	Bearing
=====							
41-	W41BN	LIC	Zn: DOTHAN		, AL	31-13-39	114.58
			TRINITY BROADCASTING NETWORK	17.30 kW	OM	85-21-10	46.15
47-	W47CG	LIC	Zn: MERIDIAN		, MS	32-19-39	309.22
			TRINITY BROADCASTING NETWORK	10.10 kW	OM	88-41-28	311.18
47Z	WWWF-LP	LIC	Zn: TALLAHASSEE		, FL	30-26-29	186.27
			TIGER EYE BROADCASTING CORPORATION	21.60 kW	OM	84-16-55	92.00
47+	W47BX	CP	Zn: COLQUITT		, GA	31-15- 0	166.29
			ESTATE OF TED ANDERSON	1.16 kW	OM	84-42-16	60.25
48Z	WYKE-LP	CP	Zn: INGLIS-YANKEETOWN		, FL	28-52-55	400.77
			CITRUS CTY. ASSN/RETARDED CHILDREN	20.20 kW	OM	82-31-30	115.92
48N	WDES-LP	LIC	Zn: DESTIN		, FL	30-23-49	30.53
			BEACH TV PROPERTIES, INC.	38.40 kW	OM	86-30-27	244.82

⁴See RM-5811, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service.

⁵The Commission recently created a new class of television stations. See *Establishment of a Class A Television Service*, MM Docket 00-10, FCC 00-115, released April 4, 2000.

Engineering Statement

(page 5 of 6)

48+	W48CF	CP	Zn:	MERIDIAN	,	MS	32- 8-18	327.43
	LYNN C. MAIDEN					OM	89- 5-36	304.10
				7.72 kW				
48N	W48AB	LIC	Zn:	COLUMBUS	,	GA	32-27-24	249.25
	GEORGIA PUBLIC TELECOMM. COMMISSION			13.30 kW		OM	84-53-57	29.89
49+	W49BM	LIC	Zn:	ANDALUSIA	,	AL	31-20-27	94.62
	DAVID M. LOFLIN			1.00 kW		OM	86-28- 2	345.60

Of the stations listed above, contour overlap (or insufficient distance spacing) under §§73.613 and 74.705 does not exist between the proposed NTSC Channel 48 facility and any of the facilities, except for WDES-LP (Channel 48, Destin, FL) and W48AB (Channel 48, Columbus, GA). WDES-LP is on the Commission's June 2, 2000 list of stations deemed eligible to file an application for Class A station status.⁶ However, as described in other portions of the Petition that this statement supports, the licensee of WDES-LP has agreed to modify the WDES-LP facility (or cancel its license) in order to remove any conflict with the instant proposal.

W48AB is not listed on the Commission's June 2, 2000 list of stations deemed eligible to file an application for Class A station status. Thus, protection to W48AB is not required. However, contour overlap with W48AB could be eliminated with the use of carrier frequency offset by W48AB (which is licensed with no carrier offset). No other LPTV station that may be eligible for Class A status is impacted or in conflict with the proposed "full power" use of Channel 48 at Destin, FL.

Summary

It is proposed that NTSC Channel 48 be allotted to Destin, Florida, as a substitute for Channel 64. The proposed allotment site complies with minimum distance spacing requirements with respect to other NTSC facilities. The substitution will not impact any DTV facility. There is no conflict with LPTV stations eligible for Class A status, except for one facility which has agreed to take steps necessary to remove the conflict. Principal community coverage to Destin is provided.

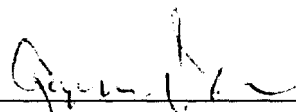
⁶See June 2, 2000 Public Notice *Certificates of Eligibility for Class A Television Station Status*, DA 00-1224.

Engineering Statement

(page 6 of 6)

Certification

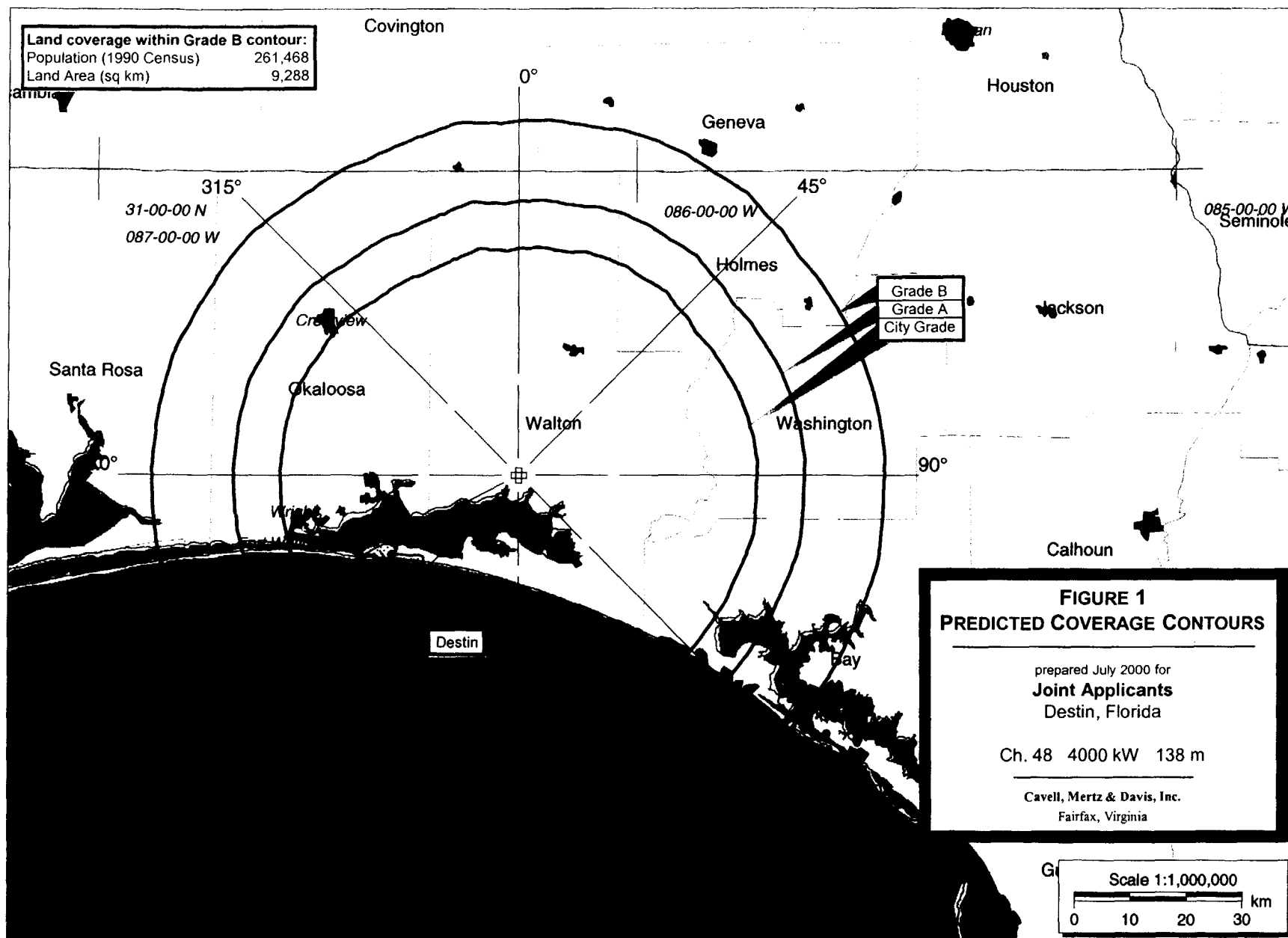
Under the penalty of perjury, the undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Davis is a principal in the firm of *Cavell, Mertz & Davis, Inc.*, is a Registered Professional Engineer in Virginia, holds a Bachelor of Science degree from Old Dominion University in Electrical Engineering Technology, and has submitted numerous engineering exhibits to various local governmental authorities and the Federal Communications Commission. His qualifications are a matter of record with that entity.



Joseph M. Davis, P.E.

July 14, 2000

Cavell, Mertz & Davis, Inc.
10300 Eaton Place Suite 200
Fairfax, VA 22030
(703) 591-0110



AGREEMENT

This AGREEMENT (the "Agreement") is entered into as of July 17, 2000, by and among E. Terrill Weiss d/b/a West Florida TV Acquisition Co. ("Weiss"), Delta Media Corp. ("Delta"), Marri Broadcasting Corp. ("Marri"), ValueVision International, Inc. ("ValueVision"), Kaleidoscope Partners ("Kaleidoscope"), Winstar Broadcasting Corp. ("Winstar") (each an "Applicant" and collectively, the "Applicants"), and Beach TV Properties, Inc. ("Beach").

WITNESSETH:

WHEREAS, the Applicants each have pending before the Federal Communications Commission ("FCC") mutually exclusive applications for a construction permit for a new commercial television broadcast station to operate on Channel 64 at Destin, Florida;

WHEREAS, pursuant to the FCC's reallocation of Channels 60-69 to public safety and other services, the Applicants must modify their respective NTSC proposals through the filing of a petition for rulemaking seeking to move from Channel 64 to a channel between channels 2-59 and avoid conflicting with digital television stations;

WHEREAS, the Applicants have agreed to jointly file a petition for rulemaking ("Joint Rulemaking Petition") seeking to amend the NTSC Table of Allotments to substitute Channel 48 for the existing Channel 64 allotment at Destin, Florida, thereby vacating Channel 64 and avoiding any conflict with digital television stations;

WHEREAS, the Applicants have agreed to enter into a Settlement Agreement to resolve the mutual exclusivity among their applications through a binding private auction, whereby the application of the Applicant placing the highest bid in such private auction (the "Successful Applicant") would be granted, and the remaining Applicants each would dismiss their respective applications for an equal share of such highest bid, in accordance with the specific terms and conditions of the Settlement Agreement;

WHEREAS, Beach is the licensee of Low Power Television Station WDES-LP, Channel 48, Destin, Florida;

WHEREAS, the Applicants' respective pending proposals to operate a full-power television station on Channel 48 at Destin would create harmful electrical interference with Station WDES-LP as it is currently operated and would not be permitted under the FCC's rules;

WHEREAS, Beach has agreed to surrender the license for Station WDES-LP, Destin, Florida, to the FCC for cancellation, or move to another channel which would not interfere with the proposed operation of a full-service television station on Channel 48 at Destin pursuant to the terms and conditions set forth in this Agreement in order to accommodate the Applicants' settlement proposal;

WHEREAS, the parties believe that this Agreement would serve the public interest because it would facilitate the commencement of a new full-power television service to Destin, Florida, and the surrounding communities;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Joint Rulemaking Petition. Pursuant to the *Report and Order* in ET Docket No. 97-157, 12 FCC Rcd 22953 (1998) ("Reallocation of Television Channels 60-69"), and *Public Notice*, DA 99-2605 (released November 22, 1999) ("Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations"), as extended by *Public Notice*, 15 FCC Rcd 4974 (2000) (collectively referred to herein as "*Window Filing Notice*"), the Applicants, on or before July 17, 2000, will file a Joint Rulemaking Petition requesting the FCC to substitute Channel 48 for the existing Channel 64 allotment at Destin, Florida. In the event the FCC grants the Joint Rulemaking Petition and allots Channel 48 to Destin, Florida, the Successful Applicant will subsequently amend its pending application to specify Channel 48 in lieu of Channel 64 at Destin.

2. License Cancellation or Modification. Pursuant to the terms and conditions stated herein, and prior to the Successful Applicant's commencement of operation on Channel 48 at Destin, Beach will cease operating Station WDES-LP, Destin, Florida, and will surrender the license for Station WDES-LP to the FCC for immediate cancellation. The Successful Applicant shall notify Beach at least ninety (90) days prior to the projected full-service commencement date on Channel 48. Beach shall discontinue operations on Station WDES-LP, Destin, Florida, at least thirty (30) days prior to said commencement date. Concurrently with such discontinuance, Beach shall surrender its Channel 48 license to the FCC for immediate cancellation. The foregoing timetable shall apply even if Beach files an application for authority to operate on a different channel and irrespective of the status of that application or any authorization issued to Beach by the FCC pursuant thereto. It is further agreed that should Beach decide to submit an alternate channel application, such application will not be filed with the FCC if, in the reasonable judgment of the Successful Applicant, operations by Beach on such channel would be likely to cause harmful electrical interference to the Successful Applicant's full-power operations on Channel 48. In order to provide security to the Applicants that Beach will honor its obligation hereunder, Beach shall provide a letter notifying the Commission that it is surrendering its license for WDES-LP and requesting immediate cancellation to be held in escrow by counsel for the Applicants when payment is made to Beach under Section 3 below.

3. Consideration. As consideration for the surrender and cancellation or modification of the WDES-LP license, Beach shall receive a *pro rata* share of the net settlement proceeds (*i.e.*, after expenses) that are distributed to the Eligible Parties (as that term is defined in the attached Settlement Agreement) pursuant to the Applicants' private auction (*e.g.*, if there are

five (5) Eligible Parties entitled to disbursement of the settlement proceeds, Beach shall be entitled to receive an amount equal to a one-sixth (1/6th) share of the settlement proceeds in the same manner as the Eligible Parties), provided that said amount shall not be less than \$125,000.00 (One Hundred and Twenty-Five Thousand Dollars). The Applicants will be jointly and severally liable for this obligation.

4. Settlement Payment. In accordance with Section 5(a) of the Settlement Agreement, within five (5) business days of the date the FCC's grant of the Settlement Agreement and issuance of the construction permit for the Channel 48 NTSC facility at Destin becomes a Final Order (as defined below), the Escrow Agent shall distribute an amount equal to a *pro rata* share of the net settlement proceeds to Beach (or \$125,000, whichever is greater).

5. Contingent Agreement. This Agreement is expressly conditioned upon the following: (i) the Applicants conducting a private auction to resolve the mutual exclusivity among their respective applications in which the initial bid is no less than \$600,000; (ii) the FCC's grant of the Joint Rulemaking Petition substituting Channel 48 for the existing Channel 64 allotment at Destin, Florida; and (iii) the FCC issuing a Final Order granting the Applicants' Joint Request for Approval of Universal Settlement Agreement and approving their attached Settlement Agreement, granting the Successful Applicant's application, and dismissing the applications of the remaining Applicants. In the event any one of these conditions is not satisfied, Beach shall have no obligation to surrender the WDES-LP license to the FCC for cancellation or move to an alternative channel. For the purposes of this Agreement, a "Final Order" shall mean an FCC order or series of orders which are no longer subject to administrative or judicial review, reconsideration, appeal, or stay, and the time for seeking any and all such relief has expired with no such relief being sought.

6. Displacement Channel. Notwithstanding anything to the contrary contained herein, Beach shall have the option, at its sole expense, of attempting to find a suitable replacement channel for WDES-LP, so long as the displacement channel would not, in the reasonable judgment of the Successful Applicant, cause harmful electrical interference to a full-service television station operating on Channel 48 at Destin, Florida, and so long as the channel is available for commencement of operations prior to the date the Successful Applicant is ready to commence operations on Channel 48.

7. Representations and Warranties of the Applicants. Each of the Applicants makes the following representations and warranties to Beach:

(a) Organization and Standing. With the exception of Weiss, who is a sole proprietor, each of the Applicants is duly organized, validly existing and in good standing under the laws of the jurisdiction of their respective organization, and are qualified to do business in each jurisdiction in which their respective assets are located. The Applicants (including Weiss) have the requisite power and authority to execute and deliver this

Agreement, to consummate the transactions contemplated hereby, and to comply with the terms, conditions and provisions hereof.

(b) Authorization. The execution, delivery and performance of this Agreement by the Applicants have been duly authorized and approved by all necessary action of the Applicants and do not require any further authorization or consent of the Applicants. This Agreement is, and when executed and delivered by the Applicants and Beach will be, a legal, valid and binding agreement of the Applicants enforceable in accordance with its respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) No Conflicts. Neither the execution and delivery by the Applicants of this Agreement or the consummation by the Applicants of any of the transactions contemplated hereby nor compliance by the Applicants with or fulfillment by the Applicants of the terms, conditions and provisions hereof will: (i) conflict with any organizational documents of the Applicants or any law, judgment, order or decree to which the Applicants are subject; or (ii) require the approval, consent, authorization or act of, or the making by the Applicants of any declaration, filing or registration with, any third party or any foreign, federal, state or local court, governmental or regulatory authority or body, except the FCC.

(d) Qualification. Each of the Applicants is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the proposed new full-service television station at Destin, Florida under the Communications Act of 1934, as amended (the "Communications Act") and the rules, regulations and policies of the FCC. There are no facts that would, under existing law and the existing rules, regulations, policies and procedures of the FCC, disqualify any of the Applicants as the holder of the FCC license for the proposed station or as the owner and operator of the Station.

8. Representations and Warranties of Beach. Beach makes the following representations and warranties to the Applicants:

(a) Organization. Beach is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is qualified to do business in each jurisdiction in which its assets are located. Beach has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to comply with the terms, conditions and provisions hereof.

(b) Authorization. The execution, delivery and performance of this Agreement by Beach have been duly authorized and approved by all necessary action of Beach and

do not require any further authorization or consent of Beach. This Agreement is, and when executed and delivered by Beach and the other parties hereto will be, a legal, valid and binding agreement of Beach enforceable in accordance with its respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) No Conflicts. Neither the execution and delivery by Beach of this Agreement or the consummation by Beach of any of the transactions contemplated hereby nor compliance by Beach with or fulfillment by Beach of the terms, conditions and provisions hereof will: (i) conflict with any organizational documents of Beach or any law, judgment, order, or decree to which Beach is subject or any contract relating to Station WDES-LP; or (ii) require the approval, consent, authorization or act of, or the making by Beach of any declaration, filing or registration with, any third party or any foreign, federal, state or local court, governmental or regulatory authority or body, except the FCC.

(d) FCC License. Beach is the holder of the FCC license for Station WDES-LP, Destin, Florida. The FCC license is in full force and effect and has not been revoked, suspended, canceled, rescinded or terminated and has not expired. There is not pending any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify the FCC license (other than proceedings to amend FCC rules of general applicability). The station is operating in compliance in all material respects with the FCC license, the Communications Act, and the rules, regulations and policies of the FCC. Beach has certified its compliance with the Community Broadcasters Protection Act (the "CBPA") and its standards for Class A eligibility and the FCC has included Station WDES-LP in a list of eligibles it has released.

9. Default/Specific Performance. The breach or failure to perform by any party to this Agreement of any material covenant, action, condition, or provision required under this Agreement, and the continuance of such breach or failure for a period of ten (10) days after notice has been given by any other party, shall constitute a default under this Agreement. In the event of a default by Beach, the Successful Applicant or any other Applicant shall be entitled to specific performance of this Agreement, it being recognized by the parties that other remedies that otherwise may be available would not be adequate to cure or compensate for a default under this Agreement. In the event of a default by any or all of the Applicants, the measure of damages to be awarded to Beach shall be the full ("liquidated") amount to be paid to Beach under this Agreement. If, as the result of an alleged breach or failure to perform by any party of its obligations under this Agreement, any other party employs an attorney to enforce or defend any of the rights or remedies under this Agreement, the prevailing party (or parties) shall be entitled

to recover its reasonable costs incurred in such action, including but not limited to reasonable attorneys' fees.

10. Notices. Except as otherwise provided herein, all notices, statements, or other documents which are required or contemplated by this Agreement shall be in writing and shall be either: (i) personally served upon all parties, effective upon the date of service; (ii) mailed, postage prepaid, by certified or registered mail or overnight courier, return receipt requested, effective upon the date of receipt; or (iii) sent by facsimile with confirmation of a completed transmission, effective upon the date of the confirmation; and sent to such person as specified in Exhibit A attached hereto or as later specified by notice by and to all parties.

11. Taxpayer Identification Numbers. Each party represents and warrants that the taxpayer identification number for such party as set forth on Exhibit A attached hereto is true and correct.

12. Integration. This Agreement constitutes the only agreement between the parties with respect to the subject matter hereof, and contains all of the terms and conditions agreed upon with respect to said subject matter, and supersedes any prior negotiations, agreements, or understandings between the parties. The representations and warranties of the parties shall survive the consummation of this Agreement for a period of one (1) year.

13. Construction. This Agreement shall be interpreted and construed in accordance with the laws of the District of Columbia applicable to transactions conducted entirely within that jurisdiction, the Communications Act, and the FCC's rules, regulations and published policies and decisions. If any provision of this Agreement is declared unlawful or unenforceable by a court or administrative agency of competent jurisdiction, then this Agreement shall be read and enforced with the offending provision deleted as if it had never been incorporated herein and with a substitute provision intended to accomplish to the maximum extent possible the intent of the parties. The headings in this Agreement are for convenience only and in no way modify, interpret, or construe the meaning of the specific provisions hereof. The waiver of any provision of this Agreement, or forbearance from enforcing any provision, by any party shall not obligate that party to waive or forbear from enforcing the same or any other provision.

14. Amendment. This Agreement shall not be altered or amended except in writing signed by the party against which enforcement is sought.

15. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted transferees, successors, heirs, and assigns.

16. Termination. In the event that the FCC has not issued an order (or orders) which satisfy the conditions precedent specified in Section 5, and such order has not become a Final Order within three (3) years from the date of this Agreement, or in the event that the FCC designates this Agreement or the conduct of any party for a hearing related to or affecting the

settlement contemplated in the attached Settlement Agreement, any party not then in default may terminate this agreement upon written notice to all other parties.

17. Counterparts. This Agreement may be signed in one or more counterparts, each constituting an original with full force and effect, but all constituting one and the same agreement. Facsimile copies of any signature on this Agreement shall be deemed and treated as if the facsimile signature is an original signature, with full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

E. TERRILL WEISS D/B/A WEST
FLORIDA TV ACQUISITION CO.

Date: _____

By: _____
E. Terrill Weiss

DELTA MEDIA CORP.

Date: _____

By: _____
Eddie Blanchard
Vice President

MARRI BROADCASTING CORP.

Date: _____

By: _____
David P. Lampel
Executive Vice President

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E. TERRILL WEISS D/B/A WEST
FLORIDA TV ACQUISITION CO.

Date: _____

By: _____
E. Terrill Weiss

DELTA MEDIA CORP.

Date: _____

By: Eddie Blanchard
Eddie Blanchard
Vice President

MARRI BROADCASTING CORP.

Date: _____

By: _____
David P. Lampel
Executive Vice President

Date: _____

By:

Joseph M. Sandri, Jr.
Vice President-Regulatory Affairs

BEACH TV PROPERTIES, INC.

Date: _____

By:


Jud Colley
President

EXHIBIT A

If to Weiss:

E. Terrill Weiss
17 Catherine's Court
Buffalo, NY 14222
Telephone: (716) 882-5978
Facsimile: (716) 882-5979
Taxpayer Identification Number:

If to Kaleidoscope:

Kaleidoscope Partners
Attn: Mr. George S. Flinn, Jr.
188 S Bellevue, Suite 222
Memphis, TN 38104
Telephone: (901) 726-8970
Facsimile: (901) 726-8936
Taxpayer Identification Number:

If to ValueVision:

ValueVision International, Inc.
Attn: Mr. Nathan Fagre
6740 Shady Oak Road
Minneapolis, MN 55344
Telephone: (612) 947-5200
Facsimile:
Taxpayer Identification Number:

EXHIBIT A

If to Weiss: E. Terrill Weiss
17 Catherine's Court
Buffalo, NY 14222
Telephone: (716) 882-5978
Facsimile: (716) 882-5979
Taxpayer Identification Number:

If to Kaleidoscope: Kaleidoscope Partners
Attn: Mr. George S. Flinn, Jr.
188 S. Bellevue, Suite 222
Memphis, TN 38104
Telephone: (901) 726-8970
Facsimile: (901) 726-8936
Taxpayer Identification Number:

If to ValueVision: ValueVision International, Inc.
Attn: Mr. Nathan Fagre
6740 Shady Oak Road
Minneapolis, MN 55344
Telephone: (612) 947-5200
Facsimile:
Taxpayer Identification Number:

If to WinStar: WinStar Broadcasting Corp.
Attn: Mr. Joseph M. Sandri, Jr.
1146 19th Street, N.W., Suite 200
Washington, DC 20036
Telephone: (202) 833-5678
Facsimile: (202) 659-1931
Taxpayer Identification Number:

If to Delta: Delta Media Corp.
Attn: Mr. Charles Chatelain
P.O. Box 159
3501 N.W. Evangeline Thruway
Carencro, LA 70520
Telephone: (318) 896-1600
Facsimile: (318) 896-2603
Taxpayer Identification Number:

If to Marri:

Marri Broadcasting Corp.
c/o Mr. David Lampel
659 West 183rd Street
New York, NY 10033-3807
Telephone: (800) 787-9006
Facsimile:
Taxpayer Identification Number:

If to Beach:

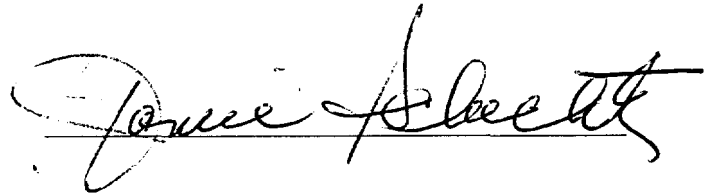
Beach TV Properties, Inc.
Attn: Mr. Jud Colley
P.O. Box 9556
Panama City, FL 32417
Telephone: (850) 234-2773
Facsimile: (850) 234-1179
Taxpayer Identification Number: 592993031

CERTIFICATE OF SERVICE

I, Janice Schechter, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 17th day of July, 2000, copies of the foregoing "Joint Petition for Rulemaking" were hand delivered to the following:

Mr. John Karousos
Chief, Allocations Branch, Mass Media Bureau
Federal Communications Commission
The Portals II, Room 3A266
445 Twelfth Street, S.W.
Washington, DC 20554

Mr. Gordon Godfrey
Engineering Policy Branch, Mass Media Bureau
Federal Communications Commission
The Portals II, Room 2-C120
445 Twelfth Street, S.W.
Washington, DC 20554

A handwritten signature in black ink, reading "Janice Schechter", written over a horizontal line.